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In re Application of :
Hansen :
Application No. 10/536,815 : DECISION ON PETITION
Filed: August 11, 2005 : PURSUANT TO
Attorney Docket No.: 133630- : 37 C.F.R. § 1.137(A)
0001 :
Title: POST-OPERATIVE VEST :

This is a decision on the petition filed on November 13, 2009, pursuant to 37 C.F.R. § 1.137(a), to revive the above-identified application.

This petition is **GRANTED**.

The concurrently submitted Power of Attorney and Change of Correspondence Address (originally presented on August 18, 2009) has been entered and made of record.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed March 20, 2009, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on June 21, 2009. A notice of abandonment was mailed on October 28, 2009.

RELEVANT PORTION OF THE C.F.R.

37 C.F.R. § 1.8(b) sets forth, *in toto*:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a)

of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

ANALYSIS

A grantable petition pursuant to 37 C.F.R. § 1.137(a) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(1);
- (3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable, and;
- (4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has alleged that a response was submitted via facsimile transmission on August 18, 2009, along with a two-month extension of time so as to make timely the submission. Petitioner has further included, *inter alia*, a copy of this response (an amendment and remarks), and it is noted that it contains a certificate of facsimile transmission, executed by Petitioner and dated August 18, 2009.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that a response was timely submitted, pursuant to 37 C.F.R. § 1.8.

Both the two-month extension of time and the petition fee have been charged to Deposit Account number 50-1391.

The Technology Center will be notified of this decision, and jurisdiction over this application is transferred to the Technology Center, so that the application may receive further processing. The Technology Center's support staff will notify the Examiner of this decision, so that the amendment that was received on November 13, 2009 (originally submitted on August 18, 2009) can be processed in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.¹ All other inquiries concerning examination procedures should be directed to the Technology Center.

/Paul Shanowski/
Paul Shanowski
Senior Attorney
Office of Petitions

¹ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any of Petitioner's further action(s).